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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,127	07/17/2003	Michael R. Stamp	ASMEX.402A	1869
20995	7590	07/25/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			BUSHEY, CHARLES S	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,127

Applicant(s)

STAMP ET AL.

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 15-22 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14 and 23 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6-27-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-14, and 23 in the reply filed on June 27, 2005 is acknowledged.

Claims 15-22, and 24-28 are withdrawn from further consideration, as being directed to a non-elected invention without traverse.

Specification

2. The abstract of the disclosure is objected to because legal phraseology, i.e., "comprises" and "comprising", should be avoided in the abstract. Correction is required. See MPEP § 608.01(b).

Specification

3. The disclosure is objected to because of the following informalities: page 31, paragraph [0111], first line, "sounded" should apparently be replaced by --surrounded--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4, 5, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 5 depend from themselves and are thus vague and indefinite.

Furthermore, claims 4 and 5 fail to further limit the structure of the claims from

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which they are intended to depend, since they simply recite intended use of the apparatus by stating materials that may be worked on by the apparatus.

Claim 23 fails to further limit the structure of claim 14 from which it depends since claim 23 simply repeats the limiting language of instant claim 14.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 4-8, 14, and 23 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tompkins et al (Figs. 2, 5, and 7; col. 3, lines 52-58; col. 5, lines 48-54).

Applicant should note that the reference discloses that the bubbler container (30) is formed from a non-ferric material, such as quartz, while the external casing of the bubbler (31) is formed from welded stainless steel. (See Fig. 2). Further the CVD processing tool that receives vapor from the bubbler is considered to anticipate applicant's broadly recited "reactor".

With respect to the materials worked on, as recited by instant claims 4 and 5, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of

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performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tompkins et al taken together with applicant's own admission of prior art.

As stated above, the material worked on cannot impart patentability to an apparatus claim. Therefore, claim 10 cannot be considered to add patentable weight to the claimed apparatus.

With respect to instant claim 9, Tompkins et al (col. 5, lines 48-54) clearly disclose a liquid level sensing means for providing a continuous monitoring of the liquid level within the device. However, the sensor of Tompkins et al measures the acoustical impedance at the gas/liquid interface to constantly determine the liquid level, not the capacitance difference, as recited by instant claim 9.

Applicant admits at page 30 of the instant specification that the claimed capacitance difference measuring device, as recited by instant claim 9, is well known within the art. It would have been obvious for an artisan at the time of the invention, to substitute one well known liquid level measuring means for another, within the apparatus as taught by Tompkins et al, in view of that as admitted known by applicant, since such would not otherwise affect the operation of the vaporizer.

11. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tompkins et al taken together with Ameen et al.

Tompkins et al as applied above substantially disclose applicant's invention as recited by instant claims 2 and 3, except for the first material being in the form of aluminum, rather than quartz, as suggested by Tompkins et al.

Ameen et al (Fig. 1; col. 6, lines 30-31, 35-36, 50-58) disclose a vapor handling device similar to that of Tompkins et al, wherein aluminum is used throughout the vessel body, except for the portion including the various feed inlet lines through the top of the device, wherein stainless steel is utilized. It would have been obvious for an artisan at the time of the invention, to substitute aluminum for the quartz material of Tompkins et al, in view of Ameen et al, since such would maintain the non-corrosive nature of the

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interior walls of the device, while lowering the overall weight of the device and eliminating the chance of stress fracture of the internal walls.

Allowable Subject Matter

12. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Scott Bushey
Primary Examiner
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